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COURT OF CRIMINAL APPEALS
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NO. PD-0324-17

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
9/22/2017
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THE STATE OF TEXAS,
Appellant,
v.

ROGER ANTHONY MARTINEZ,
Appellee.

On Appeal from Cause Number 14-06-28047-A
In the 24th Judicial District Court of Victoria County, Texas
and
Cause Number 13-15-00069-CR
In the Court of Appeals for the Thirteenth Judicial District of Texas.

BRIEF ON THE MERITS FOR ROGER ANTHONY MARTINEZ

Luis A. Martinez
209 W. Juan Linn
P.O. Box 410
Victoria, Texas 77902-0410
(361) 676-2750 (Cellular Telephone)
(361) 575-6764 (Telephone)
(361) 575-8454 (Telecopier)
Lamvictoriacounty@gmail.com

ATTORNEY FOR APPELLEE
ROGER ANTHONY MARTINEZ

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NO. PD-1337-15

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

THE STATE OF TEXAS,……Appellant

v.

ROGER ANTHONY MARTINEZ,……...Appellee

* * * * *

ROGER ANTHONY MARTINEZ'S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Comes now, ROGER ANTHONY MARTINEZ, by and through his court-appointed attorney of record, LUIS A. MARTINEZ, and respectfully files this brief on the merits in the above referenced and entitled cause and would respectfully show unto this Honorable Court of Criminal Appeals as follows:

SUMMARY OF THE ARGUMENT

At its heart, the Trial Court was asked to issue supplemental findings of fact to determine what facts were shown by circumstantial evidence found in the record to be within Officer Quinn's knowledge at the time of Appellee's arrest. After reviewing the record, the Trial Court determined

that the facts presented did not demonstrate that Officer Quinn was present when Officer Guerrero and Ramirez perceived any signs of intoxication. The Trial Court also found no persuasive evidence that Appellee was intoxicated in the presence of Quinn. In summary, the Trial Court did not find that the record established that Officer Quinn's knowledge included any specific and articulable facts that would lead Quinn to believe that Appellee was intoxicated supporting Appellee's arrest for public intoxication. Notably, the State does not dispute the factual findings of the Trial Court that were affirmed by the Court of Appeals. Instead, the State insists that Officer Guerrero and Ramirez's testimony is sufficient to prove probable cause regardless of what was within Officer Quinn's knowledge because of the collective knowledge doctrine.

Although the Trial Court and the Court of Appeals were not tasked with determining the scope of the collective knowledge doctrine, the State claims that the Court of Appeals ignored precedent concerning same in their opinion on remand. This is incorrect as the Court of Appeals did not reach those points of error raised by the State. Further, the State seeks that this Court rewrite the law while accusing the Court of Appeals of doing the same. The State has cited no case where the collective knowledge doctrine has been employed without some level of communication.

Finally, based upon the findings supplemented by the Trial Court, there was no other conclusion to reach, whether *de novo* analysis was conducted or not.

ARGUMENT

I. ISSUE NUMBER ONE:

The Court of Appeals did not erroneously decide an important question of state law conflicting with the applicable decisions of the Court of Criminal Appeals by finding that the knowledge of supporting officers cannot be used to establish probable cause.

The Trial Court and the Court of Appeals did as instructed by this Court.

The Court of Appeals did not err in the manner suggested by the State in this discretionary review. The Honorable 13th Court of Appeals did not decide an important issue of state law; rather, the Court of Appeals did as instructed by this Honorable Court. The 13th Court of Appeals evaluated the appeal before it considering the supplemental findings of fact that were furnished by the Trial Court.

At the outset, Appellee points to what was actually decided by the 13th Court of Appeals after remand. The State alleged eight points of error. The only points of error addressed in the 13th Court of Appeals opinion are the first three, whether: 1) the trial court's findings of fact are insufficient for proper appellate review; 2) the standard of review should be *de novo*; and 3) the facts known to Quinn were "sufficient to establish probable cause" to

Appellee's arrest for public intoxication. *State v. Martinez*, No. 13-15-00069-CR, 2017 WL 2200298, page 6 (Tex. App.—Corpus Christi 2017, *pet. granted*)(*mem. op. on remand*)(*not designated for publication*).

The 13th Court of Appeals overruled the first three issues and did not reach the remaining issues, citing TEX. R. APP. P. 47.1. *Id.* at 12. This is significant as the State specifically attacks the 13th Court's opinion after remand for disregarding established precedent concerning the collective knowledge doctrine. The State's 5th and 6th points of error specifically addressed facts known to Officers Guerrero and Ramirez but not communicated to Quinn and there being no necessity for an officer to communicate his observations to an arresting officer. The 13th Court of Appeals did not render a decision based upon the collective knowledge doctrine, rather upon the first three points of error raised by the State. As this Court noted in a footnote to the opinion remanding this matter to the 13th Court of Appeals, there was no occasion to address the scope of the collective knowledge doctrine. *State v. Martinez*, No. PD-1337-15, 2016 WL 7234085, pages 17, footnote 11 (Tex. Crim. App. 2016)(*not designated for publication*)(*plurality op.*).

This Court of Criminal Appeals remanded Appellee's case to the 13th Court of Appeals with the following instructions:

> The testimony at the hearing on Appellee's motion to suppress provided circumstantial evidence that, if believed, would show that Quinn had probable cause to arrest Appellee for public intoxication. However, the courts below did not consider this testimony in their probable cause analysis because they found that the absence of testimony from Quinn himself, or other testimony to show what information was expressly "relayed" to him, to be — by itself — dispositive of the probable cause issue. As a result, the trial court stopped short of evaluating the accuracy and credibility of the testimony to ascertain which facts were shown by circumstantial evidence to be within Quinn's knowledge at the time of Appellee's arrest. Findings on that issue are essential to appellate review of the trial court's probable cause determination, and the court of appeals should not have affirmed the trial court's judgment in the absence of such findings. We therefore vacate the judgment of the court of appeals and remand this cause to that court with instructions to abate it to the trial court for supplemental findings of fact and conclusions of law consistent with this opinion.

State v. Martinez, No. PD-1337-15, 2016 WL 7234085, pages 18-19 (Tex. Crim. App. 2016)(*not designated for publication*)(*plurality op.*).

The plain reading of the opinion impart that this Honorable Court of Criminal Appeals remanded this case and ordered supplemental findings to determine if it could be shown that Officer Quinn's knowledge supporting the warrantless arrest in this case could be proven circumstantially with information provided by the other officers' testimony. In other words,

could it be proven circumstantially by the other officers' testimony that Officer Quinn saw and observed what Ramirez and Guerrero had seen and observed. Likening it to a dash-cam video that can show facts and events unfolding in an officer's presence, this Court said eye-witness accounts could provide an inference that an arresting officer was just as aware of those facts as the eye-witnesses were. *State v. Martinez*, No. PD-1337-15, 2016 WL 7234085, pages 13 (Tex. Crim. App. 2016)(*not designated for publication*)(*plurality op.*).

With a dash-cam video, it is possible to see a law enforcement officer in his interaction with a citizen, which is often very helpful to a future fact-finder. A video allows the finder of fact to see what occurred and what observations were likely, or actually, to have been seen by the law enforcement officer. A video also allows the fact finder to determine credibility. For example, if an officer says he could see blood shot eyes from a DWI suspect, while still in his patrol car, the viewer of the video, whether judge or jury, could decide whether that is credible given the distance and angle between the officer and the DWI suspect by reviewing a video.

Although the above may be true, there was no video in this matter. Without a video, the State needed to provide the testimony necessary to

show what Officer Quinn observed, since Officer Quinn did not testify on his own behalf. In simpler terms, it was part of the State's burden to show that what Officers Ramirez and Guerrero observed was viewed and observed by Officer Quinn. This makes sense given that this Court found that the Trial Court erroneously believed that evidence of Quinn's knowledge could only come from his mouth or from what he was expressly told. *State v. Martinez*, No. PD-1337-15, 2016 WL 7234085, pages 17 (Tex. Crim. App. 2016)(not designated for publication)(plurality op.). This Court also noted that the Trial Court never decided which facts in evidence at the hearing were within Quinn's knowledge. *Id*. In providing supplemental findings, the Trial Court answered those questions based upon the record before it.

The 13th Court of Appeals noted in its last opinion:

> On the other hand, here, neither viewing officer testified at the suppression hearing as to what Quinn, the arresting officer, knew or was able to observe personally. The prosecutor did not ask the testifying officers what Quinn observed or was able to observe. The testifying officers did not state that they informed Quinn of what *they* personally observed—i.e. that Martinez was intoxicated to the extent that he endangered himself or others.

State v. Martinez, No. 13-15-00069-CR, 2017 WL 2200298, pages 10 -11 (Tex. App.—Corpus Christi 2017, *pet. granted*)(*mem. op. on remand*)(*not*

designated for publication). Unlike circumstantial evidence that can be provided by a video, neither officer testified what Quinn observed, nor even what he could have observed. Unlike a video, there was no way for the Trial Court to determine what, if anything, Officer Quinn observed because there was no persuasive testimony to show that Officer Quinn could have observed, much less actually or probably observed, what Officers Guerrero and Ramirez saw, heard and smelled that night.

The Trial Court's supplemental findings address and identify the missing parts of this record. The Trial Court's supplemental findings included that there was no evidence that the Court found persuasive with regard to the defendant being intoxicated in the presence of Quinn. The Trial Court also could not find that Quinn was present when Guerrero and Ramirez perceived any signs of intoxication. In addition to those findings noted by the 13th Court of Appeals and referenced *supra.*, the Trial Court did not find any credible evidence from Officer Ramirez's testimony that Quinn was physically present during the time that Ramirez perceived the defendant to be intoxicated. *State v. Martinez*, No. 13-15-00069-CR, 2017 WL 2200298, page 5 (Tex. App.—Corpus Christi 2017, *pet. granted*)(*mem. op. on remand*)(*not designated for publication*). The Trial Court also noted that the record did not show when and for how long Quinn was present during

the interactions between Officer Guerrero and the Defendant. *Id*. at 4. Based upon both officers' testimony, the Trial Court explicitly found that it could not infer that Quinn perceived any indicators of intoxication. *Id*. at 5.

Put simply, the Trial Court was not persuaded that Officers Ramirez and Guerrero established that Officer Quinn observed the signs of intoxication that they may have observed. Notably, the State makes no argument that the Trial Court's supplemental findings are not supported by the record, nor attacks the foundation for the supplemental findings.

The collective knowledge doctrine does not apply in this case.

Throughout the entirety of the first issue raised by the State in this appeal, the State does not attack the foundation, nor the findings made by the Trial Court and affirmed by the Court of Appeals. Rather, it focuses upon the scope of the collective knowledge doctrine. At the heart of the State's argument is that what is "known to one is known to all" without regard to any communication of information.

In the last opinion remanding this case, this Court acknowledged that the collective knowledge doctrine, also known as the "fellow officer rule," states that "police are, in a limited sense, are 'entitled to act' upon the strength of a communication through official channels directing or requesting that an arrest or search be made." *State v. Martinez*, No. PD-

1337-15, 2016 WL 7234085, page 17, footnote 11 (Tex. Crim. App. 2016)(*not designated for publication*)(*plurality op.*). This Court also acknowledged that the Fifth Circuit applies the collective knowledge doctrine "so long as there is 'some degree of communication' between the acting officer and the officer who has knowledge of the necessary facts. *Id*. Despite this, the State continues to insist that the sum of all knowledge known to cooperating police officers at the time of the arrest is to be considered in determining if there was probable cause, regardless of any level of communication.

Pyles and Derichsweiler do not support the State's argument.

A close examination of the facts of the chief cases cited by the State illustrates why the State's reliance on the collective knowledge is misguided. Primarily, the State relies upon *Pyles* and *Derichsweiler* to support the contentions made in the State's briefing.

Appellant, Johnny Dean Pyles, was convicted of capital murder after shooting and killing Ray Kovar, an officer with the Dallas County Sheriff's Office. After Kovar was shot and died, Reserve Deputy Richard Hart was called out to help search for the person suspected of killing Kovar. Deputy Hart found, confronted and arrested *Pyles. See Pyles v. State*, 755 S.W.2d 98 (Tex. Crim. App. 1988). Prior to trial, Pyles filed a motion to suppress in his

case seeking to suppress a confession. Pyles claimed that the confession was involuntary and the fruit of an unjustified arrest because he had committed no crime in the presence of Deputy Hart. *Pyles v. State*, 755 S.W.2d at 109. Unlike this case, Deputy Hart testified at the hearing on the motion to suppress. In addition to several things Hart knew at the time of the arrest, because of his personal knowledge and observation, the Court of Criminal Appeals noted that Hart knew that a fellow officer had been shot and killed, that the suspect was still at large in the area that Hart helped seal off and that a jeep had been abandoned at the scene of the crime. *Pyles*, 755 at 109-110.

In *Derichsweiler*, Officer Caraby of the Lewisville Police Department received a computer message from his dispatcher about a suspicious car that was circling the parking lot of Walmart and McDonald's. *Derichsweiler v. State*, 348 S.W.3d 906, 911 (Tex. Crim. App. 2011). He was supplied with the make, model, color and license plate number of the suspicious car. Officer Carraby found the car and contacted the appellant, Derichsweiler. Officer Caraby acknowledged that the only information he had to base reasonable suspicion on was the dispatcher's broadcast. In *Derichweiler*, this Court pointed to the cumulative information known to the cooperating officers, including a 911 dispatcher, as information to be considered in determining whether reasonable suspicion exists. *Derichsweiler v. State*,

348 S.W. 3d at 914. The key however to distinguishing the *Derichsweiler* holding from this case, is that the dispatcher relayed the information from a citizen caller to Officer Caraby, upon which reasonable suspicion for the contact could be based.

The key fact that distinguishes *Derichsweiler* and *Pyles* from this case, is that other officers or dispatchers were sharing information known to them with the arresting officer, satisfying the requirements of 14.01. In other words, in those cases, even though an observing officer did not physically arrest a defendant, the arresting officer made an arrest based upon the information shared with him by a trustworthy source, the observing officer.

The State continues to cite Astran and Willis for support both of which are also inapplicable in this case.

Pointing to *Astran* and *Willis*, the State alleges that the Court of Appeals ignored this Court's precedent. *Astran* and *Willis* do not support the State's underlying contention regarding the collective knowledge doctrine. A closer look at the cases and others not cited by the State reveals why they do not.

In *Astran,* Dallas police officers, uniformed and undercover, were working in a combined effort to arrest drug offenders on the date of Astran's

(the appellant) arrest. *Astran v. State,* 799 S.W.2d 761 (Tex. Crim. App. 1990). Officer Wilson, working undercover, bought heroin from Astran and drove away. After the purchase, Officer Wilson drove away and immediately radioed another officer, Officer Black, to arrest Astran. Wilson communicated a detailed description of Astran to Officer Black. *Astran v. State*, 799 at 762. In the *Astran* opinion, this Court of Criminal Appeals opined that "an officer may rely on others in determining that probable cause exists, and may in some instances rely on other officers in making the actual arrest."

In *Willis v. State,* another Dallas police officer, Officer Foster, telephoned Willis (the appellant) and arranged to meet him in Dallas later that morning in order to buy heroin from Willis. Officer Foster subsequently drove to the pre-arranged place. Appellant drove up next to Officer Foster's car, stopped and exited his car. After entering Foster's car, Willis removed five balloons from a plastic baggie and handed them to Officer Foster in exchange for cash. Appellant returned to his car and drove away. As Willis drove off, Officer Foster signaled other officers who followed Willis, stopped him, arrested him, searched him and seized drugs found on his person. In finding that the arrest was proper, this Court of Criminal Appeals noted that Officer Foster participated in the arrest because he had

firsthand knowledge of the offense and relayed that knowledge to his fellow officers. *Willis v. State*, 669 S.W.2d 728 (Tex. Crim. App. 1984).

In *Coleman v. State*, this Court of Criminal Appeals reiterated this point when reviewing its holdings on both *Willis* and *Astran*:

> In *Willis v. State*, 669 S.W.2d 728 (Tex. Crim. App. 1984), the Court held that the officer whose presence an offense was committed need not personally seize the appellant to make an arrest under Article 14.01, when that officer was part of a surveillance team and ***participated in the arrest by relaying his knowledge to fellow officers*** and by observing the arrest from less than a mile away.
>
> ***
>
> In *Astran*, the undercover officer who observed the offense "saw the felony, was part of a team of officers present at the scene of the offense, ***and relayed appellant's physical description and geographic location to the arresting officer.***

Coleman v. State, 359 S.W.3d 749, 752 (Tex. Crim. App. 2011)(*emphasis added*).

To accept the State's position is to accept that all law enforcement who happen to be at the same scene can each testify as to probable cause for an arrest they do not make. It assumes that all law enforcement have the ability to participate in "hive thinking: what is known to one is known to all." This is not what Texas jurisprudence allows. Rather, the case law indicates that an officer without personal knowledge of a crime to arrest

someone, may rely on information, such as from other officers, to establish probable cause. Put simply, an officer may arrest someone acting on information from a trustworthy source, such as another officer, saying essentially, "I just witnessed a crime, arrest this guy." This interpretation of the caselaw makes sense; one officer may witness a hit and run, call it in to other officers with a description and the facts he is relying upon for probable cause and have another officer down the road stop, and arrest, the suspect. One officer may see a suspect at a scene drop something out of view of his partner, tell his partner, and let the partner make the arrest based upon what he saw and imparted to his colleague.

The difference between the cases cited by the State and this case has already been acknowledged by this Court. In the opinion remanding this case, this Court noted that *Astran* and *Willis* are inapplicable because Quinn was at the scene when the arrest was made, rather than at another location. *State v. Martinez*, No. PD-1337-15, 2016 WL 7234085, page 17, footnote 10 (Tex. Crim. App. 2016)(*not designated for publication*)(*plurality op.*).

Ultimately, the key fact that distinguishes *Pyles*, *Derichsweiler*, *Astran* and *Willis* from this case, is that the officers were sharing information known to them, satisfying the requirements of 14.01. In other words, in those cases, even though an observing officer did not physically arrest a

defendant, the arresting officer made an arrest based upon the information shared with him by a trustworthy source, the observing officer.

It is the State who wants to rewrite the law.

In the last opinion remanding this case, this Court acknowledged that the collective knowledge doctrine, also known as the "fellow officer rule," states that "police are, in a limited sense, are 'entitled to act' upon the strength of a communication through official channels directing or requesting that an arrest or search be made." *State v. Martinez*, No. PD-1337-15, 2016 WL 7234085, page 17, footnote 11 (Tex. Crim. App. 2016)(*not designated for publication*)(*plurality op.*). This Court also noted, the need for communication to invoke the collective knowledge doctrine has been recognized by the Federal judiciary. As recently as 2015, the United States Fifth Circuit Court of Appeals has also articulated the need for communication in order to invoke the collective knowledge doctrine. "Under the collective knowledge doctrine, it is not necessary for the arresting officer to know all of the facts amounting to probable cause, **as long as there is some degree of communication between the arresting officer and an officer who has knowledge of all the necessary facts.**" *U.S. v. Ortiz*, 781 F.3d 221, 228 (5th Cir. 2015)(*citing United States v. Ibarra,* 493 F.3d 526, 530 (5th Cir.2007). (emphasis added).

In this case, the State is attempting to bootstrap the missing testimony from the arresting officer. This Court should not expand the holdings of its previous cases to allow missing testimony to be supplemented by non-arresting officers in a situation such as this case presents. Nor is it necessary to do so. The Trial Court essentially found that the State failed to show whether Quinn actually witnessed the same things as Guerrero and Ramirez. Whether or not the Trial Court could infer something does not mean that it must. Based upon the supplemental findings made by the Trial Court, it is clear that the Trial Court did not make the inference that Officer Quinn observed what the other officers did. Having not found in its favor, the State now wishes to expand the scope of the collective knowledge doctrine. Despite asking the Court to do this, the State has cited no case where the application of the collective knowledge doctrine has been applied in the way that it encourages this Court to do. In each of the cases cited and relied upon by the State, there has always been some degree of communication between the members of law enforcement. The requirement of communication is not onerous to the State as it attempts to argue. In looking at the sum of what is known to all law enforcement in any case, an officer is not required to have personally witnessed every single element to arrive at probable cause to make an arrest. An officer is allowed to rely on what other officers or law

enforcement tells him or her. In *Pyles*, Deputy Hart knew that Deputy Kovar had been shot and killed, that the suspect was believed to be at large in the area he secured, and that a jeep had been abandoned at the crime scene. This was not because he witnessed the shooting or its immediate aftermath; it was because he had been informed when he was called out to assist in searching for the suspect. In *Derichsweiler*, the officer did not know any more than what was imparted to him by a 911 dispatcher about a suspicious car in a Wal-Mart parking lot, not about what he personally witnessed. The point is that even in the cases the State cites as controlling precedent, communication was involved. This Court should not expand the collective knowledge doctrine.

ISSUE NUMBER TWO:

> **Even with a *de novo* review, the Trial Court's findings establish that Officer Quinn did not have probable cause for Appellee's arrest.**

Appellee acknowledges that a *de novo* review is appropriate in reviewing decisions regarding the application of the facts to the law such as probable cause. However, given that the Trial Court found that Officer Quinn did not have personal knowledge or that his personal knowledge included the observation madeby Officers Guerrero and Ramirez, the Trial Court properly concluded that the State failed to meet its burden. As the

Trial Court found 1) there was no evidence persuasive to the Court that Appellee was intoxicated in the presence of Quinn and 2) the Trial Court did not find that Quinn was present when Guerrero and Ramirez perceived any signs of intoxication, the Trial Court also properly concluded that Quinn had no knowledge that Appellee had probably committed the offense of public intoxication. If the record did not support that Quinn observed what Guerrero and Ramirez observed based on circumstantial evidence, then the State failed to show that Quinn's knowledge supported probable cause for the arrest, specifically, the element of intoxication.

Throughout its argument, the State attempts to patch together the elements of public intoxication. As the Trial Court noted, hearing Appellee yelling and screaming does not prove public intoxication, nor does the time of night or the location. Ultimately, the State's argument fails because, according to the Trial Court, Quinn's knowledge did not include a basis for intoxication.

CONCLUSION and PRAYER

The State had to show probable cause for the arrest of Appellee. That burden could have been satisfied by the testimony of the arresting officer, Quinn. Because Quinn was under indictment, he did not testify at the hearing on Appellee's motion to suppression. Probable cause is based upon

what an arresting officer views and observes and his knowledge at the time of the arrest. The record is silent as to what Quinn's knowledge was leading him to make the arrest. The State produced two witnesses in an attempt to show what they saw that night. That is inadequate and insufficient as the State did not prove that Officer Quinn observed what they did. While Officers Guerrero and Ramirez testified about what they observed, they could not fill the void because they could not say what Officer Quinn observed, smelled, touched, tasted and heard.

This record does not support probable cause for the warrantless arrest of Appellee.

WHEREFORE, PREMISES CONSIDERED, ROGER ANTHONY MARTINEZ prays that this Honorable Court affirm the judgment of the Court of Appeals, and for any other relief he may be entitled to in law or in equity.

Respectfully submitted,

LUIS A. MARTINEZ, P.C.
P.O. Box 410
Victoria, Texas 77902-0410
(361) 676-2750 (Cellular Telephone)
(361) 575-6764 (Telephone)
(361) 575-8454 (Telecopier)
lamvictoriacounty@gmail.com

By:

Luis A. Martinez
State Bar No. 24010213

ATTORNEY FOR APPELLEE
ROGER ANTHONY MARTINEZ

CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I, the undersigned, hereby certify that the number of words in Appellee's Brief submitted on September 21, 2017, excluding those matters listed in Rule 9.4(i)(3) is 4,371 words.

Luis A. Martinez

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief is being served to those named below in the manner indicated, on this the 21st day September, 2017.

Luis A. Martinez

Via Email: bguy@vctx.org
Mr. Brendan W. Guy
Assistant District Attorney
205 N. Bridge, Suite 301
Victoria, Texas 77901
Attorney for the Appellant

Via Email: information@spa.texas.gov
State Prosecuting Attorney
P.O. Box 13046
Capital Station
Austin, Texas 78711